

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

BRIAN STENGEL,

Plaintiff,

v.

No. CIV 14-1058 RB/SCY

**NEW MEXICO CORRECTIONS
DEPARTMENT, et al.,**

Defendants.

MEMORANDUM OPINION AND ORDER

This matter is before the Court on Plaintiff's Motion to Reopen the Time to File Appeal, filed on August 7, 2015. (Doc. 18.) Having considered the motion, relevant law, and being otherwise fully informed, the Court denies the motion.

I. Background

On November 20, 2014, Plaintiff filed this matter *pro se*. (Doc. 1.) At the time, Plaintiff was incarcerated at the Lea County Correctional Facility in Hobbs, New Mexico. (*Id.*) On November 24, 2014, the Court granted Plaintiff's request to proceed *in forma pauperis*. (Doc. 4.) On May 26, 2015, the Court issued an Order and Judgment dismissing the case. (Docs. 8 and 9.) The Clerk of the Court mailed the documents to Plaintiff's post office box in Reserve, New Mexico. (*Id.*) At the time, Plaintiff was still incarcerated at the Lea County Correctional Facility in Hobbs. (*Id.*) On May 29, 2015, the Order and Judgment were forwarded to Plaintiff from Reserve to Hobbs. (Doc. 18.) On June 1, 2015, Plaintiff was released from the Lea County Correctional Facility. (*Id.*) The Order and Judgment were received by the Lea County Correctional Facility on June 3, 2015. (*Id.*) On June 12, 2015, the Lea County Correctional

Facility forwarded the Order and Judgment to Plaintiff in Reserve. (*Id.*) Plaintiff received the Order and Judgment on June 17, 2015. (*Id.*)

Plaintiff filed a notice of appeal on July 8, 2015, which was three weeks after he received the Order and Judgment. (Doc. 11.) On August 7, 2015, after the Tenth Circuit Court of Appeals notified Plaintiff of the jurisdictional defect, Plaintiff filed his Motion to Reopen Time to File Notice of Appeal. (Doc. 18.) By order issued on August 10, 2015, the Tenth Circuit Court of Appeals held the appeal in abeyance pending this Court's resolution of Plaintiff's Motion to Reopen Time to File Notice of Appeal. (Doc. 19.)

II. Discussion

The Court liberally construes Plaintiff's motion due to his *pro se* status. *See United States v. Nelson*, 465 F.3d 1145, 1148 (10th Cir. 2006). Rule 4(a)(6) of the Federal Rules of Appellate Procedure permits the Court to reopen the time to file an appeal in certain circumstances. *See* Fed. R. App. P. 4(a)(6). The rule provides:

- (6) Reopening the Time to File an Appeal. The district court may reopen the time to file an appeal for a period of 14 days after the date when its order to reopen is entered, but only if all the following conditions are satisfied:
 - (A) the court finds that the moving party did not receive notice under Federal Rule of Civil Procedure 77(d) of the entry of the judgment or order sought to be appealed within 21 days after entry;
 - (B) the motion is filed within 180 days after the judgment or order is entered or within 14 days after the moving party receives notice under Federal Rule of Civil Procedure 77(d) of the entry, whichever is earlier; and
 - (C) the court finds that no party would be prejudiced.

Fed. R. App. P. 4(a)(6). In other words, the Plaintiff must show that (1) he did not receive notice of the Order and Judgment; (2) he filed the motion to reopen within 180 days of entry of the Order and Judgment or 14 days after receiving notice of the order, whichever is earlier; and (3) no party

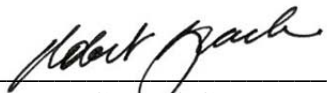
would be prejudiced. *See* Fed. R. App. P. 4(a)(6).

The Court finds that Plaintiff did not receive notice of the Order and Judgment dismissing this case until June 17, 2015, which was after the 21-day period in Rule 4(a)(6)(A). However, Plaintiff filed his motion on August 7, 2015, which was well over 14 days after June 17, 2015, the date he received notice of the Order and Judgment. Plaintiff has provided no basis for a finding that his motion to reopen was filed within 14 days after he received notice of the Order and Judgment as required by Rule 4(a)(6)(B).

III. Conclusion

Rule 4(a)(6) allows the Court to reopen the time to file an appeal only if the movant satisfies all of its conditions. In that Plaintiff has not satisfied all of the conditions in Rule 4(a)(6), the Court will deny the motion.

IT IS SO ORDERED.



ROBERT C. BRACK
UNITED STATES DISTRICT JUDGE